

### **REMARKS**

Claims 61-71 and 74-87 are now pending in the application. Claims 61 and 62 are currently amended. No new claims are added and no claims are cancelled by this amendment. Support for the foregoing amendment can be found throughout the specification, drawings, and claims as originally filed and as amended. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **SPECIFICATION**

Applicant has amended the specification in order to support the amendment to claim 62 more fully discussed below.

### **REJECTION UNDER 35 U.S.C. § 112**

Claims 61-71 and 74-87 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed.

With regard to items 3 and 4 in the Office Action, Claim 61 has been amended to provide proper antecedent basis for the noted claim limitations, thereby overcoming these objections. Applicant notes that such amendments should have been anticipated by the Examiner and thus do not raise new issues for consideration. See, MPEP 706.07(a). Thus, applicant requests that these minor amendments be entered at this time.

Claims 61, 64, 65 and 81 have also been rejected as being indefinite for use of the term “substantially”. The term “substantially” is often used in conjunction with another term to describe a particular characteristic of the claimed invention and courts have consistently held that use of this term is not indefinite. See, MPEP 2173.05(b)(D). In addition, the term “substantially” as recited in these claims is readily understood in this context. For example, tubular member 400 is substantially cylindrical as shown in Figure 4. Therefore, applicant respectfully asserts that these claim particularly point to and claim the subject matter.

The Examiner also indicated how he was construing these terms for purposes of examination. In one instance, applicant intended substantially to qualify the term cylindrical (not the term solid) and thus this limitation has been amended accordingly. More importantly, applicant does not understand what is meant by “not really cylindrical” and thus does not agree with this interpretation. As noted above, the phrase “substantially cylindrical” is readily understood this in this context. Applicant respectfully requests reconsideration of these interpretations and withdrawal of this rejection.

#### **REJECTION UNDER 35 U.S.C. § 103**

Claims 61-64, 71, 75, 80-83, 86 and 87 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ian (U.K. Pat. App. GB 2,321,688) (“Ian”) in view of Boast (European Pat. App. No. 0,571,082 A1) (“Boast”). Claims 65-69, 74, and 76-79 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ian in view of Boast. Claim 70 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ian in view of Boast and further in view of Jacoby (U.S. Pat. No. 4,088,229) (“Jacoby”). Claim

84 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ian in view of Boast and further in view of Molari, Jr. (U.S. Pat. No. Re 32,406 E) ("Molari"). Claim 85 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ian in view of Boast and further in view of Consoli (U.S. Pat. No. 5,746,622) ("Consoli"). These rejections are respectfully traversed.

In our previous response, it had been argued that the column protector attaches to the upright column "in a self attaching manner without the need for any additional fixing". In contrast, Ian teaches that the protective jacket is comprised of three components, linings 1 and 3, and an outer shell. The inner linings are snugly fitted to an upright of a rack frame. However, the outer shell is loosely fitted around the upright and inner linings. Overall, the jacket is held in place by ties in order to clamp the jacket around the uprights. Therefore, Ian does not provide a column protector device which directly encapsulates the external frontage and lateral sides of an upright column of a racking system by clipping on and grasping said column without the need for any separate fixings or fasteners.

The Examiner rejected this argument on the basis that the limitation was not found in the claims. On the contrary, claim 61 recites "said outer shell is configured to fit around said upright column such that the outer shell retains to said column in a self attaching manner without the need for any additional fixings" (see line 10). Thus, the Examiner can no longer rely upon the ties as taught by Ian as a basis for rejecting this claim. For at least this reason, applicant requests reconsideration and withdrawal of this rejection.

Claim 62 has a clarification objection as the claims as published refer to "peripheral edges." The "peripheral edges" are referred to in paragraph 80 and Figure 4 "such that the outer shell forms a channel having first and second peripheral surfaces 405, 406." The exact meaning of the term "peripheral surfaces" is immediately clarified as "405, 406 extending between the first and second ends and running along a whole length of the outer shell and which oppose each other across a gap." This is further shown when referring to Figure 4. It is our belief that referring to 405, 406 as "peripheral surfaces" is an obvious error as it does not explicitly describe them fully when referring to the as published description. A better label would be "exposed edge." Applicant proposes to amend the specification to address this issue.

Furthermore, claim 62 has been amended to read, "the outer shell partially surrounds the first and second inner side members so that the exposed edges of the outer shell lay adjacent to the sides of the column at a position where the column is relatively narrower." From the amended claim and Figure 10, it is clearly shown that the present application only partially covers the side members of the upright column whereby the outer shell grasps the upright column at its narrow point. Ian teaches that the protective device fully encompasses the side members of the upright column whereby the outer surface does not lie adjacent to the column where the column is relatively narrower. For this additional reason, applicant contends that claim 62 is patentable over the cited references. Accordingly, applicants respectfully request the Examiner to reconsider and withdraw this rejection.

## CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: /Timothy D. MacIntyre/\_\_\_\_\_  
Timothy D. MacIntyre  
Reg. No. 42,824

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

TDM/dec